IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Pradeshik Kisan Pong Bandh Bhumi Kharidar Samiti **VS.** Shri Ram Singh & Ors.

D.B.CIVIL REVIEW/RECALLING PETITION NO.31/2006
IN
D.B. CIVIL SPECIAL APPEAL (WRIT) NO.666/1999

Date of order : 21st July, 2006

PRESENT

HON'BLE JUSTICE MR. RAJESH BALIA
HON'BLE JUSTICE MR. R.P. VYAS

REPORTABLE

Mr. Anand Purohit for the petitioner.

Mr. K.L. Thakur, Addl. Advocate General.

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BY THE COURT: (PER HON'BLE RAJESH BALIA, J.)

This review petition has been filed in pursuance of order dated 17.4.2006 passed by Supreme Court in I.A. No.1 in Petition for Special Leave to Appeal (Civil) 2400/2006 which was filed against the judgment dated 14.3.2005 passed by this Court in D.B. Civil Special Appeal No.666/99 whereby the said appeal was dismissed.

While dismissing the appeal, the Division Bench noticed the directions of the Supreme Court contained in Writ Petition (C) No.439/1992, Pradesh Pong Bandh Visthapit Samiti, Rajasthan and Anr. Vs. UOI & Ors. decided on 26th July, 1996 and reported in AIR 1996 SC 3445 wherein the Supreme Court has issued certain directions in relation to the land to be made available for rehabilitating the persons who have been displaced in Himachal Pradesh as a result of construction of Pong Dam. Before noticing the directions issued, which is the bone of contention in this application, it would be apposite for us to notice the background and directions issued by the Supreme Court in Pradesh Pong Bandh Visthapit Samiti's case.

The construction work on the Pong Dam was commenced in the year 1960. The land which was required for the purpose fell within the territory of State of Himachal Pradesh. The water impounded by the Pong Dam was within the State of Himachal Pradesh, but the benefit thereof accrued to the State of Rajasthan.

To rehabilitate the persons, who were displaced as a result of acquisition of land and construction of Dam, the problem

was considered firstly between the representatives of State of Rajasthan and Punjab as at the time the land was acquired, the State of Himachal Pradesh was not in existence and thereafter in 1962 a meeting was held between the then Union Secretary for Irrigation and Power and the representatives of the two States in which it was agreed that oustees of the Pong Dam were eligible for allotment of land in Rajasthan Canal area i.e. in the State of Rajasthan. The Government of Himachal Pardesh estimated in 1969 that a total number of 20722 persons would be oustees by the reasons of acquisition and gave this figure to the Committee which was accepted by the Committee and placed before the Committee of the concerned Chief Ministers. These figures were not questioned by the Rajasthan Government.

In furtherance of these efforts to rehabilitate the pong dam oustees, the Rajasthan Colonization (Allotment of Government Land to Pong Dam Oustees in the Indira Gandhi Canal Area) Rules, 1972 were framed and the pong dam oustees were to be allotted lands in Rajasthan on the terms and conditions contained in the said Rules of 1972. The terms and conditions for allotment have been mentioned in Rule 6. One of the conditions which is relevant for the present purpose was that during the period of ghair khatedari tenure, allottee shall not have any alienable and

transferable rights in the land and shall not transfer or alienate the land to any other person in any way e.g. by sale, mortgage, gift, transfer, lease or otherwise. No transfer or alienation of land even in the form of Nokarnama, Muktiarnama, Tabliknama, Ikranama or the like shall be permissible.

Provided that after expiry of 10 years from the date of taking over the possession by the allottee and subject to allottee having paid full price of land allotted to him, the Colonisation Commissioner may, on the application of the allottee after satisfying the hard and exceptional circumstances exist,allow the allottees to relinquish the land allotteed to him in favour of the State Government on refund of the price paid by him for the said land.

It also envisaged that initially the allotment shall be on ghair-khatedari tenure only and to the allottee no khatedari rights shall accrue in any land so allotted till the expiry of 20 years from the date of allotment and till the full price of the land together with all other dues of the State Government, if any, has been paid by him to the State Government.

In 1981, the position of the rehabilitation of the pong dam oustees was reviewed and certain amendments in the Rules of

1972 were agreed to. By then only 9169 Pong Dam Oustees have been allotted land. But they were facing infrastructual problems in continued cultivation of the land.

Cancellation of allotment made in favour of pong dam oustees due to non taking possession there of within 45 days of allotments were to be reviewed. While the period for acquisition of khatedari rights were to be reduced from 20 years to 10 years provided that before the acquisition of khatedari rights all dues due to the State government have been fully discharged but it was agreed that right to alienate the land would not accrue before the expiry of 20 years from the date of allotment. It was also noticed that certain lands were not irrigable and cancellation of allotment has been made because the same has not been cultivated. Such cancellation orders were also agreed to be withdrawn. It was also agreed that before the allotment orders were issued encroachment on the allotted land should first be removed.

Thereafter on 12th March, 1992, the Rules of 1992 were further amended and in the proviso to Rule 6 for expression "20 years" the expression "25 years" was substituted that is to say the period of embargo on alienation of the allotted land was increased from 20 years to 25 years and Rule 6A was also

inserted. Rule 6A sub-clause (1) reads as under:-

> "(1) Notwithstanding anything to the contrary contained in these rules, the land reverted to the State Government under sub-rule (10) of Rule 6 as a result of transfer or alienation of the allotted land in breach of sub-rule (4) of Rule 6 of the Rules, may be sold by way of special allotment to the purported transferee **who has been a bona fide resident of Rajasthan** and has not been involved in anti-national activities, and who is also in possession of the land as on 31st December, 1991 and continues to be in possession till the date of reversion, after holding such enquiry as the Collector deems proper, subject to the ceiling area applicable to the purported transferee under the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973."

These provisions were challenged before the Supreme Court in the aforesaid case.

The Supreme Court struck down the amendment by which the period for embargo on alienation of the lands allotted to the pong dam oustees was increased. The Rule 6A enabled the State Government to transfer the land by way of special allotment to those persons who were in possession of the land allotted to

pong dam oustees as transferees or proposed transferees since before the amendment was also struck down. Large number of cancellation took place as a result of the aforesaid amendment inter alia on the ground that pong dam oustees in whose favour the land has been allotted had alienated their land in contravention of the provisions contained in Rule 6 and, therefore, the land was reverted to the State Government and simultaneously the Rule 6A was operated by making the allotment of the same land in favour of the transferees as special allotment. The following observations were made in this regard by the Supreme Court:-

> "It had been decided in 1992, as the affidavit of the State of Rajasthan shows, to regularise the possession of the Rajasthanis who were in possession of lands allotted to oustees. It was for that purpose that Section 6-A was then incorporated. Rule 8-AAA was required to be introduced within a few months thereafter because the State of Himachal Pradesh complained of its blantant misuse and a review of cancellations was agreed to. Rule 8-AAA states, as already noted, that a review was required because the oustee allottees had been deprived of allotments in breach of the provisions of natural justice. The number of cases where this happened because of alleged breach of Rule 6(4) and subsequent application of Rule 6-A was 1935. Out of these, 836

> cases had been disposed of by 31st March, 1996. What the consequence of such disposal was is not stated in the affidavit of the State of Rajasthan. Mr. Aruneshwar Gupta could not tell us either, but, according to him, no oustee allottee could have been put back in possession because of a judgment of the Rajasthan High Court. He did not cite the judgment nor give the number of or title of the case. For alleged breaches of Rules 6(5) and 6(6) the position is similar. The affidavit of the petitioners date 28th June, 1996, states that 2063 allotments were cancelled upon the insertion into the Rules of Rule 6A; that, upon review, 843 cancellation orders were affirmed and only 94 cases were decided in favour of oustee allottees; and that is 1126 cases review is pending."

With these premises, the Supreme Court concluded "having regard to the track record, the Revenue Authorities of Rajasthan cannot be entrusted with the task".

It further indicted State of Rajasthan when it observed:-

> "We think that directions are necessary if the oustees are to get their due; we are left in no doubt that the State of Rajasthan has disfavoured them and favoured

> the Rajasthani and has made rules and implemented them with that in mind."

While directing that the notification dated 12th March, 1992 amending the Rajasthan Colonisation (Allotment of Government Land to Pong Dam Oustees in the Indira Gandhi Canal Colony) Rules, 1972, was malafide and ultra vires and, consequently, the substitution of 25 years for 20 years in the proviso to Rule 6(3) and the introduction of Rule 6-A were quashed and set aside.

The Court did not rest at that but further directed that:-

> "The Chief Justice of Rajasthan High Court shall nominate, within 6 weeks of receipt of a copy of this order, one or more District Judges for the purpose now set out."

The purpose set out was that the cases of all cancellation of allotment to the oustees subsequent to January 1992 shall be reviewed by the District Judge. Where the District Judge finds that an oustee allottee has committed a breach that invites the forfeiture of his land, he shall so record. Where the

District Judge finds to the contrary, whether or not the oustee allottee appears, he shall so record. The District Judge shall also record, should he so find, that the oustee allottee was forced to leave the land because of lack of irrigation or other essential facilities such as water,road, schools and medical assistance and/ or because of coercion, intimidation or trespass. The District Judge shall complete the task allotted to him as soon as reasonably possible.

The directions made by the Supreme Court were as under:-

> "The committee shall be responsible for the settlement in the command area of the Indira Gandhi Canal Colony in Rajasthan of all oustees who have secured certificates of eligibility in that behalf from the State of Himachal Pradesh, except those who, having been allotted land, have been found by the District Judge aforementioned to have forfeited it, provided that they were not forced to leave the land because of lack of irrigation or other essential facilities such as water, roads, schools and medical assistance and/or because of coercion, intimidation of trespass. **Such land only shall revert to the State of Rajasthan and it shall be utilised for the purpose of allotment to oustees not yet settled.**"

According to these directives, the lands of those persons, who had been allotted land but were found to have transferred their land in contravention of Rule 6 prior to expiry of 20 years or had abandoned voluntarily the land so allotted by the District Judge aforementioned shall stand forfeited and it shall be reverted to the State of Rajasthan and it shall be used for the purpose of allotment to the oustees not yet settled.

It is keeping in view the aforesaid directions that the allotment made in favour of the pong dam oustees which as per the recommendations of the District Judge appointed by the Chief Justice in terms of the aforesaid directions stood forfeited were to revert back to the State Government to be utilised for the purpose of settling those pong dam oustees, who have not been settled.

The result of the forfeiting the allotment and quashing of rule 6A coupled with the fact that the land, allotment of which was made in favour of pong dam oustees, if were to be forfeited the land under such allotment were reverted back to the State Government and to be utilised only for the purpose of settling the pong dam oustees, made it abundantly clear that such land could not be allowed to remain in possession of the transferees or

trespassers. If the forfeiture of allotment in favour of the pong dam oustees has taken place as a result of transfers made in violation of Rule 6(4), then the continuous possession after the recommendation of the District Judge forfeiting the allotment made in favour of pong dam oustees was not lawfully permissible because the same reverted to State, but did not remain at the State for disposal at its sweet will. Such land was required to be made available to the pool for settling the pong dam oustees, who had not been settled till then and the task of utilisation of that land so reverted to the State of Rajasthan was to be undertaken by the Committee and not by the State of Rajasthan.

Hence irresistibly, it led to continue possession of such transferees after decision of District Judge a special Tribunal set up under the order of the Supreme Court to be unlawful as trespassers.

It is keeping in view the aforesaid directions of Supreme Court in the aforesaid decision that while deciding D.B. Civil Special Appeal No.666/1999 in Ram Singh's case who was pong dam oustee, the allotment made in his favour was cancelled and finding that he has transferred the land in violation of condition contained in Rule 6 of Rules 1972, when it was noticed that the

transferees were still continuing in possession, notwithstanding that no challenge to order of District Judge has been made by them. The Court directed the State authorities to immediately evict them from the land in question in the said writ petition and give effect to reversion of land to State for the purpose of settling remaining Pong Dam Oustees.

The finding recorded by the District Judge on reviewing the cases in terms of the directions of the Supreme Court were binding on the transferor, transferee and the Government. The Supreme Court has clearly observed that the report shall be binding on the oustee allottees and State of Rajasthan there. Hence, there was hardly any scope for judicial review of such orders.

Be that as it may, the petition as well as the special appeal failed. However, during the course of hearing of the appeal in Ram Singh's case, the judgment in which the subject matter of this application and another D.B. Special Appeal No.261/1999, Kashi Ram Vs. Union of India & Ors. to which reference has been made in the judgment dated 14th March, 2005 in Ram Singh's case, it was observed that in spite of clear provisions of law and directions of the Court the persons who are in unauthorised

possession are still in possession. Keeping in view the aforesaid backdrop of the Supreme Court directives which we have noticed in detail, the Court observed as under:-

> "That in spite of the directions of this Court, if the respondent Officers have not taken care of the directions and trying to ignore their obligations to secure the land allotment of which to Pong Dam Oustees have been cancelled to be made available for rehabilitating the remaining Pong Dam Oustees, the State Authorities have failed to act in accordance with law to give effect to the above directions. To give effect to the directions of the Hon'ble Supreme Court for reverting the land to the State Government and make the land available to the unsettled Pong Dam Oustees is true deposed in the State Government under the agreement arrived between the two States.
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> We, therefore, further direct that the respondents shall give effect to the above directions of the Supreme Court and wherever it is found that the provisions made for Pong Dam Oustees were not complied with in accordance with law and total allotted lands which were transferred in breach of provisions of Rules of 1972 and cancelled and where such lands were allotted under Rule 6-A to illegal transferee, which special allotments stood inoperative as void as a result of Rule 6-A being declared invalid, but still the persons are in unauthorised possession over the

lands to be treated as trespassers having been allowed to remain in possession of such lands and the land is not being made secured by the State Government for rehabilitating the Pong Dam Oustees, the action must be complied with within three months.

For this purpose, a separate case may be registered for seeking compliance report about the above directions. A copy of this Order be communicated to the Chief Secretary and Revenue Secretary to the Government of Rajasthan with the direction to the District Collector, Sri Ganganagar to furnish compliance report within ten days."

The SLP was preferred before the Supreme Court against the aforesaid judgment not by Ram Singh and others, the appellant whose appeal was dismissed but by Pradeshik Kishan Pong B.B. Kharidar Samiti. The petition was dismissed by the Supreme Court with the following order on 17.4.2006:-

"Permission to file special leave petition is granted.

Learned counsel for the petitioner states that the writ petition related to in essence a private dispute between certain allottees, but was disposed of by the High Court by making certain observations relating to

> allotments in general which would affect the petitioner. It is also stated that the entire issue relating to the allotment relating to the allotment of the land to the Pong Dam oustee-allottees has been remitted by this Court to the Himachal Pradesh High Court. In our view these are arguments which should appropriately be made to the High Court. The special leave petition is therefore dismissed as withdrawn with liberty granted to the petitioner to approach the High Court."

This has led to filing of this petition. Apparently, the petitioner which is stated to be an association of those transferees of land allotted to the pong dam oustees, whose allotments have been cancelled for breach of terms of allotment and as a result of declaration of Rule 6A to be ultra vires, the special allotment made in their favour after cancellation of allotment made in favour of the pong dam oustees also stood nullified. This position is not in contention.

It is also not in contention that in terms of the order of the Supreme Court noticed above, on cancellation of the allotment made in favour of Pong Dam Oustees, the lands must revert to the State Government and were to be made available only for the purpose of rehabilitating the pong dam oustees, who had not been settled so far. This is clearly indicative of the mandate of Supreme

Court that on cancellation of the allotment made in favour of pong dam oustees, the land must revert back to the State Government and become part of the pool of the land available for settling the pong dam oustees. This also implies the persons in possession of the land as on the date, the order of cancellation was made by the competent authority and thereafter the said cancellation order was found to be justified by the District Judge on review of the order in terms of the direction of the Supreme Court the transferree person in possession was not entitle to continue to remain in possession and the land was required to be made available to the State Government to be dealt with by the committee for settling the pong dam oustees. The Supreme Court has clearly not trusted the State authorities for the purpose of this task of settling the pong dam oustees in no uncertain terms and it said in para 24 of the judgment that 'having regard to their track record, the revenue authorities of Rajasthan cannot be entrusted with the task'.

The continued possession of such transferees despite cancellation of allotment until now ventilates the apprehension of the Apex Court.

The only contention that has been raised before us by the learned counsel for the applicant for recalling the aforesaid

directions issued to the State authorities for implementing the order of the cancellation of allotment made in favour of pong dam oustees by dispossessing the persons in possession and securing the land for the purpose of making it available to the Committee for settling the unsettled pong dam oustees. The entire matter of settlement has been referred to Himachal Pradesh High Court by the Supreme Court and in tern Himachal Pradesh High Court has referred to the Committee constituted by the Supreme Court in the judgment noticed above. According to the learned counsel, since no claim of pong dam oustees remained to be satisfied as per the report submitted by the Committee, the Members of the applicant, who are continuing in possession, after the cancellation of allotment made in favour of the pong dam oustees and holding the special allotment to them be valid be not disturbed and their possession of the land be regularised in terms of the price already paid by them.

In other words, the case of applicant is that since all the claims of pong dam oustees have been settled and the land in question is not required for settling the pong dam oustees any more, the transferrees of such pong dam oustees, whose allotments have been cancelled be allowed to continue to occupy the land in question. In alternative, it has also been urged by the learned counsel for the applicants that at any rate since all the

matters about settling the pong dam oustees have been referred to the High Power Committee, unless those cases are settled, the applicants may be allowed to continue with their possession and the directions issued to give effect to consequences of the order of canceling the allotment made in favour of pong dam oustees and invalidation of the special allotment made in favour of the transferee as a result of Rule 6A having been decided ultra vires under which special allotments were made and to secure the land in question to the 'land pool' making it available to the settlement of pong dam oustees, be recalled or be kept in abeyance and the notices issued to such transferee for delivering their possession to the State Government be set aside.

The learned counsel for the respondent–State urged that this petition cannot be granted to the applicant as it would be contrary to the directions issued by the Supreme Court in the case of Pradesh Pong Bandh Visthapit Samiti, Rajasthan and another Vs. Union of India and others reported in **AIR 1996 SC 3445** in which it has specifically been directed that the land under allotment which have been forfeited by the District Judge as per his decision rendered in pursuance of the directions issued by the Supreme Court to review all the mattes of cancellation of allotments made in favour of pong dam oustees subsequent to 1st January, 1992 must

revert to the State of Rajasthan and it be utilised for the purpose of allotment to oustees not yet settled. Whether ultimately all lands so reverted back to the State of Rajasthan is utilised by the Committee constituted under the directions of the Supreme Court for settling pong dam oustees so far not settled or more land is required is not relevant for the purpose of giving effect to the aforesaid directions. The land if any remained in balance after settling all pong dam oustees may be available for fresh allotment as per the Rules prevalent when such land is made available after releasing it from attachment with the settlement of Pong Dam oustees, but the persons who are in possession under invalid transfers cannot be allowed to reap the fruits of such indicted transactions merely because State in defiance of the Supreme Court has not procured the land reverted to it by evicting unauthorised transferees therefrom.

We have given our careful consideration to the rival submissions made and are of the opinion that this application must fail.

It may be recalled here that the Supreme Court indicted the State of Rajasthan in making amendments in Rules of 1972 in the year 1972 by amending the proviso to Rule 6(3) and

framing Rules 6A observed that :-

> "21. Allotment of the lands took place in 1973-75; this is the State of Rajasthan's case. That the allottees would not be able to sell the land allotted to them for a period of 20 years after allotment was a stipulated agreed to between the States of Rajasthan and Himachal Pradesh. It was upon that stipulation that the allottees were allotted the land and paid its price. When the 20 years period was nearing completion in 1992 the State of Rajasthan unilaterally increased the period by 5 years by amending the proviso to Rule 6(3). The State of Rajasthan could not change unilaterally what was the subject of agreement as aforesaid; besides, the right to sell the land after 20 years vested in the allotee and could not be divested. As will become clear, there is substance in the plea of the State of Himachal Pradesh that the period had been increased with a view to gain time to cancel allotments on the pretext that the oustees had breached one or other condition of allotment and that the amendment is a mala fide exercise of power. Rule 6-A, newly introduced in 1992, needs to be considered in a wider context. Suffice it to say now that it is bad because of the land reserved for oustees must go, on reversion to the State of Rajasthan, to such oustees as remained unsettled."

The Court further indicted the State of Rajasthan

when it said about the discharge of obligation of the State of Rajasthan in settling the pong dam oustees as certified by Himachal Pradesh State that “having regard to the track record, the Revenue Authorities of the Rajasthan cannot be entrusted with this task”.

With this background while issuing direction for review of all such cases where cancellation of allotment made in favour of pong dam oustees had taken place subsequent to 1st January, 1992 by one or more District Judges appointed for this purpose by the Chief Justice of Rajasthan High Court. The District Judge was required to review all cases suo motu by issuing notice to the allotteee and even if the allottee had not responded he was required to consider his case and after making consideration of various aspects the District Judge was required to send his report to the Committee, which the Supreme Court nominated in that very order. Significantly the Court made it clear that the report shall be binding upon the oustees allottees and State of Rajasthan. The task of implementing the report of the District Judge was given to the committee to be constituted by the Union of India, which shall have Secretary of Revenue and Water Reesources UOI as its Chairman and the Secretaries of appropriate Ministry in the State of Rajasthan and Himachal Pradesh as its members. The Court made the following observations making it clear that where the District

Judge has found the allotment made in favour of the pong dam oustees to be cancelled because he has committed breach of condition of such allotment, those lands were reverted to the State Government for allotment to the oustees for their settlement:-

> "The committee shall be responsible for the settlement in the command area of the Indira Gandhi Canal Colony in Rajasthan of all oustees who have secured certificates of eligibility in that behalf from the State of Himachal Pradesh, except those who, having been allotted land, have been found by the District Judge aforementioned to have forfeited it, provided that they were not forced to leave the land because of lack of irrigation or other essential facilities such as water, roads, schools and medical assistance and/ or because of coercion, intimidation or trespass. Such land only shall revert to the State of Rajasthan and it shall be utilised for the purpose of allotment to oustees not yet settled."

Apparently, the Supreme Court was zealous to safeguard the interest of Pong Dam oustees and give effect to inter State agreement in which Rajasthan State was found to be wanting and to see that the consequence of cancellation of allotment made in favour of pong dam oustees would result in reverting the land of such allottees back to the State of Rajasthan and such land must be available for the benefit of unsettled pong dam oustees and not

for the benefit of any other person. Therefore, more than once, it was emphasized in the order that the lands allotted to such pong dam oustees whose allotments have been cancelled must revert back to the State Government and had to be made available for settling the unsettled pong dam oustees. The consequences of order passed by the District Judge on review would be effective immediately and cannot be postponed. The transferees of such pong dam oustees, whose allotments have been cancelled could not continue to hold that land any more after submission of report by the District Judge in that regard.

This court has occasion to consider the consequence of that order passed by the District Judge on review in D.B. Special Appeal (writ) No.261/1999, Kashi Ram Vs. U.O.I. decided on 2nd December, 2004 considering the contention raised on behalf of transferrees of such allottee. In the aforesaid case it was urged by transferees that the transfer made in their favour by the allottee may be against the Rules, but since the State Government has subsequently transferred the land to them by charging prices then it is independent transaction of transfer and that transaction cannot be held invalid. The Court rejected this contention in the following manner :-

> "Suffice it to state that the said allotment was made only under Rule 6A on cancellation of original allotment vide order dated 2.2.1992 and since the Rule 6A had been struck down as violative of Article 14 of the Constitution, the allotment made in favour of the persons, in terms of invalid rule must also fail. Moreover, the land reverted to the State Government on cancellation of the allotment made earlier to the pong dam oustees are subject to the direction of the Supreme Court in the aforesaid decision, wherein the Court has clearly observed while striking down Rule 6A, newly introduced in 1992, that the land reserved for oustees must go on reversion to the State of Rajasthan to such other oustees as remained unsettled."

In coming to this conclusion, the Court relied on the aforesaid observations and referred to the clear observations emphasizing the directions to the State of Rajasthan that "it shall be the duty of the State of Rajasthan to enforce the law, maintain order and ensure that the oustee allottee, his family and his belonging are un-harmed".

Apparently, this direction also inheres into it securing the possession of land once granted to the pong dam oustees but which has been cancelled as a result of the oustees have

committed breach of term in accordance with the finding reached by the District Judge appointed to review all such matters in pursuance of the directions of the Supreme Court. The enforcement of such directions was also the obligation of the State of Rajasthan by securing the possession of such land. It was keeping in view the aforesaid directives, this Court had issued directions on finding that most of the transferees from the allottees of the pong dam oustees which have been cancelled are continuing to remain on the land in violation of the directions of the Supreme Court as a result of non-seriousness of State of Rajasthan in implementing that order by securing the possession of the land for the benefit of settling the pong dam oustees.

We may notice here that in Kashi Ram's case (supra) the Court has directed to secure possession of the land from the tranasferees and the petitioner in that case finding that they were continuing in possession and have not also challenged the order of the learned District Judge acting as special Tribunal. In Ram Singh's case, finding the malaise to be deep rooted, the direction in general were issued by registering an independent case to secure the compliance of the Supreme Court judgment in letter and spirit by the State of Rajasthan.

Now that the State of Rajasthan is acting in furtherance of the obligation cast upon it by the Supreme Court as a result of attention having been drawn to this position by the Court, once again the vested interest of those transferees, who have lost their right to remain in possession but had continued to remain in possession because of the inaction on the part of the respondent State are seeking recall of such directions or to keep abeyance the direction of Supreme Court which in our opinion is wholly unwarranted.

Learned counsel drew attention to the observations of Hon'ble Supreme Court that in the event that for some supervening reason this cannot be done, it shall be the obligation of the State of Rajasthan to make available an equivalent extent of irrigable land in the said command area for being allotted to them (pong dam oustees).

To say the least no supervening reason has been brought out which could have resisted implementation of the orders for reversion of land of such allottees which were found liable to be cancelled. Merely because somehow or the other the beneficiaries of illegal transfers have continued to remain in possession cannot be considered as a supervening event to defeat the directions of

the Supreme Court. It is only an attempt to put premium on default by the persons in possession as a result of illegal transfer.

About the alternative submissions made by the learned counsel that since the matter is pending consideration by the High Power Committee in terms of the directions issued by the High Court of Himachal Pradesh, the issue of securing the land from such persons, the transfer in whose favour was found to be invalid, be kept in abeyance. Out attention was invited to the order passed by the Hon'ble Supreme on 28th Jan., 2004 and the order passed by the Himachal Pradesh High Court on 26th October, 2005 on various applications to contend that since all the matters are pending for settlement of pong dam oustees with the Committee re-nominated by the Himachal Pradesh High Court as nominated by the Supreme Court, this matter is also likely to be considered by the said committee constituted for the purpose in terms of the aforesaid directives the implementation of directions contained in judgment under review be stayed.

Answering this contention, the learned Additional Advocate General had raised preliminary objection that since in the order dated 17.4.2006, the Supreme Court has referred to remission of all cases to the Himachal Pradesh High Court where

the allotment of the land to the pong dam oustees is to be considered, this application could not have been preferred before this Court and the matter should have been before the Himachal Pradesh High Court.

Having considered the submissions made before us and the orders passed by the High Court, we are of the opinion that these contentions are misconceived. There is no room to infer from any aspect that the question of validity of transfers made in favour of the members of the petitioners' samiti, who are admittedly those persons the transfers made in whose favour by the pong dam oustees allottees by the State of Rajasthan were held to be in breach of the term and condition of allotment made by the concerned pong dam oustees and were cancelled. The question of saving their transfers or giving them allotment after the land made available to the High Powered Committee constituted as per the direction of the Supreme Court has settled the claim of all pong dam oustees or to whom the matter has been referred to the Himachal Pradesh High Court does not arise. The effect of Supreme Court judgment delivered in Pradesh Pong Bandh Visthapit Samiti, Rajasthan and Anr. Vs. UOI & Ors. decided on 26th July, 1996 and reported in AIR 1996 SC 3445 did not contain any direction in respect of the transferees in possession under

invalid transfers where allotment made in favour of pong dam oustees is ultimately found to be in breach of condition of allotment and the allotment is forfeited such land must revert back to the State Government only for the purpose of resettling the unsettled pong dam oustees. The committee was constituted to monitor the task of settling unsettled pong dam oustees. Therefore, the land which reverted to the State of Rajasthan as a result of cancellation of such allotments sustained by District Judge / Judges as special Tribunal, the transferees of such allottees had to go out and make the land available to the State of Rajasthan to be placed before the Committee so that the committee can appropriately deal with the land for the purpose of settling the unsettled pong dam oustees. This is clear purport of what we have noticed above and what flows from the two bench decision of this Court as a reading of the Supreme Court judgment. The three judgments to which reference has been made does not deviate from the aforesaid position.

The decision of the Supreme Court rejecting the S.L.P. filed by the present applicants before us does not show anything about it. It only records the contention made by the petitioner before the Supreme Court that:-

"It is also stated that the entire issue relating to the

> allotment of the land to the Pong Dam Oustee-allottees has been remitted by this Court to the Himachal Pradesh High Court. In our view these are arguments which should appropriately be made to the High Court. The special leave petition is therefore dismissed as withdrawn with liberty granted to the petitioner to approach the High Court.

This contention only related to the allotment of land to the Pong Dam Oustee allottees, but the matter relating to the fate of the transferees on allotment having been cancelled was not subject matter of remittance made to the Himachal Pradesh High Court.

The principal contention before the Supreme Court in S.L.P. was that the writ petition related to a private dispute between the private allottees but was disposed of by the High Court by making certain observations regarding allotment which was effected.

Apparently, the said reference to the directions issued to the State Government to implement the order of the Supreme Court in order to secure the land allotted to the pong dam oustees which was subject matter of the cancellation order and which

according to the Supreme Court must revert to the State Government and no one else so that the same can be utilized for the purpose of settling the pong dam oustees. These directions did not relate to private dispute between the parties but related to broad directions to implement the directions of Supreme Court. It was in this respect that the petitioners sought leave to withdraw the special leave petition with a view to approach this High Court to make fresh submissions about the aforesaid directions issued in Ram Singh's case which is subject matter of this application. Obviously, the learned Additional Advocate General is not right that the liberty to approach the High Court was to approach the Himachal Pradesh High Court. The contention that certain observations were made against the transferees, who were not parties before the Court, if any application is to be made in respect thereof should be made only to the Court which has made the order and not to other Court. Apparently, the preliminary objection of the learned Additional Advocate General that the application ought not have been preferred before this Court in view of the order passed by the Supreme Court on 17.4.2006 cannot be sustained.

Likewise, the contention of the learned counsel for the petitioner that the matter is subjected to the directions of the Himachal Pradesh High Court is also not sustainable. The

Supreme Court on 28th January, 2004 had made the following order in respect of interim application pending before the Supreme Court:-

> "We consider that it will be more appropriate for the High Court to monitor further progress in this case. Therefore, we transfer all I.As., pending before us, to the High Court of Himachal Pradesh for further consideration of the matter."

The interim applications referred to in the order were on behalf of Pradesh Pong Bandh Visthapit Samiti, Rajasthan and others. Apparently all these interim applications were made by Samiti, Association, or any NGO pursuing the cause of pong dam oustees, who have yet been not settled. It had no reference to consider the cases of those transfers which were found to be in breach of terms and conditions under which the allotment was made, which has resulted in forfeiture of the allotment made in favour of such pong dam oustees, effect of which was that the lands reverted to the State of Rajasthan. The subsequent resort to Rule 6A as was inserted by making amendment in the Rules of 1972 paving the way for making the special allotment in favour of the trnasferees of such invalid transaction in possession, who were Rajasthanies was struck down and the transaction of transfer as

well as special allotment under Rule 6A too aborted. Apparently, the chapter of cancellation of allotment made in favour of the pong dam oustees and the cessation of any right of transferees from such oustees of any sort in relation to such land came to an end to require any further consideration. The directives of the Supreme Court in order dated 28th January, 204 cannot be read in the manner as has been suggested by the learned counsel for the petitioner that it included the consideration of permitting the transferees of invalid transactions continuing in possession to retain that advantage notwithstanding that the same has come to an end along with the setting aside of Rules 6A and subsequent finding by the District Judge as a special Tribunal that the original allotment made in favour of the pong dam oustees was liable to be cancelled, consequence of which was also made clear that such land was reverted to the State of Rajasthan only for the purpose of utilisation for unsettled pong dam oustees with further rider that the task for settling the unsettled pong dam oustees would not be under taken by the State of Rajasthan but by the High Power Committee nominated by the Supreme Court.

Since in pursuance of directions issued by the Supreme Court in Writ Petition No.439/1992 referred to above various applications were submitted by Pradesh Pong Bandh

Visthapit Samiti, Rajasthan and others for settling Pong Dam Oustees, those applications were transferred to the Himachal Pradesh High Court to monitor further progress in the case.

When the matter reached the Himachal Pradesh High Court, the Division Bench of the Himachal Pradesh High Court prefaced its order as under:-

> "All these applications have been received on transfer from Supreme Court with directions for their consideration by this Court in the light of the judgment passed by the Supreme Court in the case Pradesh Pong Bandh Visthapit Samiti and another VERSUS Union of India and others (WP(c) No.439 of 1992) decided on 26th July, 1996. Because of the aforesaid directions of their Lordships of the Supreme Court, we proceed to take up all these applications for consideration and disposal."

Then making order on CMP 352/04 IT NO.4/01, the Division Bench of the Himachal Pradesh High Court after referring to the background of the case made the following order :-

> "Looking to the prayers in the aforesaid application and the orders passed by the Supreme Court in the

> aforesaid judgment, all that we can do as far as the limited jurisdiction of this Court is concerned, (–jurisdiction limited to consideration and disposal of the application on transfer from the Supreme Court) is to request the Committee constituted by the Supreme Court to ensure that the task entrusted to it is completed at its earliest. Because the Supreme Court had specially declined to fix any time limit, we also cannot fix any time limit. Actually, we will go as far as to strongly recommend and suggest that the Committee may convene its next meeting within three months from today and ensure that meetings thereafter are held at regular intervals, with frequencies of not less than every subsequent meeting once in 3–4 months.:

In the similar fashion when the CMPs No.353/2004 was disposed of by referring to the Committee the CMP No.354/2004 and 689/2004 were dismissed as not pressed and CMP No.1306/2004 was allowed by not permitting the applicant to prosecute the petition through Shri Gian Chand Garg, Senior Vice President of petitioner No.1, in place of Shri Rajinder Pal.

Apparently, there is nothing in the order of Himachal Pradesh High Court on which the petitioners can bank upon to suggest that their case is also to be considered by the High Power

Committee or by the Himachal Pradesh High Court in the light of directions of the Supreme Court referred to above. The High Power Committee or Himachal Pradesh High Court was required to consider the cases of rehabilitating the Pong Dam Oustees. Task of dealing with case of illegal transfers made to persons in Rajasthan, for retention of their land was not the task entrusted to them. In fact by the order of Supreme Court fate of these transferees from oustees, which were found to be in violation of terms of allotment and allotment made in favour of oustees was cancelled, stood closed by the Supreme Court directions. Only course for them was to have immediately surrendered the land to State of Rajasthan and if they did not surrender the land so acquired by them contrary to law voluntarily, State was under an obligation to see that such land come to it for the purpose of implementing order of Supreme Court.

This application to say the least is an attempt in clear defiance of the Supreme Court direction to justify continued possession of land illegally acquired without handing it over to State Government immediately when cancellation of allotment made in favour of oustees became final on recording of finding by special courts appointed by Chief Justice of Rajasthan High Court. This review petition is a blatant attempt to seek directions of this Court

by the members of petitioner association to continue to remain in possession of land to which they have lost right to retain. The application is an abuse of process of court. Even without directions of this Court, which is sought to be recalled, State Government in terms of Supreme Court directions was under an obligation to act as noticed above.

In view of aforesaid discussion, we find no force in the application and the same is hereby rejected.

We have come to the conclusion that present application amounts to abuse of process of the Court aimed at defeating and nullifying the directions issued by the Supreme Court in spite of consequences of transfers made by pong dam oustees having been found illegal which ought to result in reversion of the land to the State. Therefore, this is a fit case in which exemplary cost need be awarded. The petitioner association has not disclosed the list of its so called members. In the circumstances, we direct that the cost of this petition shall be paid by the Association which we quantify at Rs.50,000/-.

[R.P. VYAS], J. [RAJESH BALIA], J.

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